IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2430 OF 1990

Abdul Kadir Usman Pathan,
Since deceased by his L.Rs.
Mohamed Ismail Abdul Kadir Pathan & Ors. ...Petitioners.
Vs.
Mohd. Hanif Mohd. Nazir Momin
Since deceased by his L.Rs.
1A. Mohd. Akman Mohd. Hanif & Ors. ...Respondents.
....
Mr.A. K. Abhyankar for the Petitioner.
Mr. Amol P. Mhatre for the Respondents.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 20, 2006.

P.C.

The suit for eviction by the landlords has been decreed on the ground that the premises are required reasonably and bonafide by the landlords for their own use and occupation. The decree for eviction has been passed consequent upon the judgment of the Additional District Judge, Thane, who allowed the appeal of the landlords against the dismissal of the suit by the Trial Court. The judgment of the Additional District Judge, of 25th April 1990 is impugned in these proceedings.

The original parties to the suit for eviction died during the pendency of these proceedings and their legal representatives have been brought on the record. The suit filed by the landlords proceeded on the averment that an area admeasuring 26' x 10' in Municipal House No.119 situated at Quartergate, Bhiwandi was let out to the tenant on a monthly rental of Rs.14/-. There was an averment in the plaint that the family of the landlords consisted of 22 members and details were furnished in paragraph 6 of the Plaint. All the 22 members of the family of the landlords were stated to be residing in one tenement admeasuring 24' x 24' in Municipal House No.116. The tenant denied the allegation that the landlords required the premises reasonably and bonafide. Evidence was adduced on behalf of the landlords.

The Trial Court held against the landlords on the ground that House No.116 in which the landlords were residing admeasured 35' x 30' with an open space of 7 feet. The Trial Court held that the area was double than that in the occupation of the tenant and that the increase in the family of the landlords was not sudden. The question of comparative hardship was answered against the landlords. The matter was carried in appeal to the

Appellate Court. The Appellate Court noted that the tenant had in the course of his cross-examination admitted that all the landlords resided with their families together and that the eldest son stays separately. The Appellate Court was of the view that the evidence of the landlords was not challenged. The landlords had produced photo copies of the Ration Card which supported their case. There was not an iota of evidence to show that the Plaintiffs were in possession of any other residential accommodation. The Appellate Court held that the landlords were in possession of an area which was insufficient for the huge family and that the need was genuine. The Appellate Court held that there was no basis to conclude that the need was of malafide or lacking in bonafides. In so far as the comparative hardship was concerned, it is held that the Defendant has not made any attempt to secure alternative accommodation since the suit was of 1979.

Counsel appearing on behalf of the Petitioners submitted that the Appellate Court was not justified in reversing the judgment of the Trial Court. There is no merit in the submission. The evidence on the record clearly establishes that the need of the landlords is genuine, reasonable and bonafide. The landlords'

family consists of 22 members. Even if the area in the occupation of the landlords is stated to admeasure 35' x 30' with an open space of 7 feet, it could not possibly be said that the area was sufficient to accommodate 22 members of the family. The issue of comparative hardship has correctly been held against the tenant since the tenant has not made any effort to obtain alternative accommodation. In these circumstances, the interference of this Court in the supervisory jurisdiction under Article 227 of the Constitution is not warranted. The petition is dismissed. In the facts and circumstances of the case, time to vacate the premises is granted to the Petitioners until 31st October 2006, subject to the filing of the usual undertaking within a period of four weeks from today.

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